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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

REIN NEGGO, JR. ,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

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REPLY BRIEF OF APPELLANT

---

APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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A brief summary of the relevant facts presented by the Government, which occurred prior to the arrest, are these:

1. That on January 27, 1966, which was the date on which defendant was arrested, the charting analysis of the Post Office Department indicated that mail along the delivery route serviced by the Appellant was missing or was being stolen;
2. That test delivery letters were planted by Postal Inspectors on the morning of January 27, 1966;
3. That surveillance of the Appellant was commenced on the morning of January 27, 1966 by Postal Inspector Johnson;
4. That after Appellant had returned to the Post Office, having completed his daily delivery, a search was made of the test



letters, which were not found by anyone in the Post Office, nor by the Postal Inspectors;

5. That at approximately 4:20 P. M. , as the defendant was leaving the postal station and was still on the premises in the parking lot, the Appellant was approached by the Postal Inspectors who identified themselves as such;

6. That the Postal Inspectors then questioned Appellant concerning the missing mail.

It is to be noted that the contents of the affidavits of the Postal Inspectors, filed in opposition to the motion to suppress, fail to contain any statement that anyone had seen the missing mail in the Appellant's possession. There was no evidence of any kind that anyone saw the Appellant take the letters, either on his route or at the post office. Nor was there any evidence from anyone that the letters were not brought back by the Appellant after completing his delivery route to the postal station. Parenthetically, it is respectfully pointed out that Appellant was a relief mail carrier and that his delivery route varied from time to time. The only concrete facts that the Postal Inspectors had available up to the time that they approached the Appellant's car, which was at 4:20 P. M. , was the fact that letters were missing and that these letters had not been found by anyone.



## ARGUMENT

### I

#### THE ARREST OF APPELLANT WAS UNLAWFUL.

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##### A. There Was No Probable Cause to Arrest Appellant.

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While it is reasonable to conclude that the Postal Inspectors may have been justified in casting suspicion upon the Appellant as a possible suspect, there was no evidence to suggest that he was the probable embezzler of the mail. The Postal Inspectors had no information, other than the mere suspicion, that the Appellant had taken and retained the mail. Had the Postal Inspectors known that the Appellant had taken the mail and retained it, there would have been no necessity, nor any reason, to search the postal station after Appellant returned from his daily delivery route. The evidence was clear that extensive searches for the mail were made by postal officials after Appellant returned from his route.

The words "probable cause" do not mean a mere suspicion nor do they mean a mere possibility. "Probable cause" clearly implies, and means, that some concrete evidence is available, justifying the conclusion that an act had been perpetrated. In this case, it obviously means evidence indicating that Appellant had taken the mail or that he was in possession of the mail. There was no direct evidence to that effect prior to the time that the Postal Inspectors approached the Appellant in the parking lot of the postal



station after his daily work had been completed. It is, therefore, respectfully submitted that no "probable cause" existed to warrant an arrest based upon the limited surveillance on January 27, 1966.

B. United States Postal Inspectors Have  
No Right to Make An Arrest Under  
Federal Law.

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The ruling of the Court in United States v. Helbock, 76 F. Supp. 985, to the effect that Postal Inspectors have no right to arrest, has thus far not been overruled. In fact, in Ward v. United States, this Court was faced with a similar situation and it at that time elected to hold that the arrest was valid under state law, thus sidestepping the question of whether or not Postal Inspectors had the right to arrest under federal law.

The right of a Postal Inspector to make an arrest has been the subject of considerable discussion both in the Legislative and the Judicial branches of the Government. The Postal Service has repeatedly demanded that it be given the right to make arrests, yet the Congress has repeatedly denied Postal Inspectors that right. Consequently, the ruling in the Helbock case, as well as the Ward case, is clearly consistent with the legislative policy which has thus far denied Postal Inspectors the right to make an arrest under federal law. The appellant concedes that Postal Inspectors have "the power" to make an arrest. Their right, however, to make an arrest under federal law is denied by Appellant.





## II

### APPELLANT'S ARREST OCCURRED BEFORE ANY SEARCH OR SEIZURE WAS CONDUCTED.

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The Government contends that Appellant was not arrested until after he had emptied his pockets and the incriminating fifty cent coin was identified by Postal Inspector Johnson. This contention is wholly without merit. The word "arrest", as defined in Black's Law Dictionary, means "to deprive a person of his liberty by legal authority". Section 835 of the Penal Code of the State of California reads, in part, as follows:

"An arrest is made by an actual restraint of the person of defendant, or by his submission to the custody of an officer."

In the case at bar, the two Postal Inspectors approached the Appellant's car, as he was about to enter same, in the parking lot of the postal station. At the time they approached the car, they exhibited the postal identification card, identifying them as Postal Inspectors. At that time Appellant was a postal employee and was required to submit to their authority. Appellant was not free to leave and, of course, submitted to their authority. It is obvious, therefore, that from the moment the Postal Inspectors identified themselves and commenced questioning Appellant, he was deprived of his right to leave and as a practical matter, the arrest had taken place at that point. To conclude otherwise would



amount to giving law enforcement officers authority to restrain an individual for an indefinite period of time, which the legislatures and the Courts have thus far denied them. The conduct of the Postal Inspectors, after they had approached Appellant's car in the parking lot of the postal station, is clearly indicative, as a matter of law, that a confinement of the Appellant had taken place the moment they approached his automobile.

### III

#### APPELLANT WAS DENIED THE RIGHT TO COUNSEL UNDER ESCOBEDO v. ILLINOIS.

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If in fact Appellant was arrested and in custody after the Postal Inspectors had detained him in the parking lot of the postal station, or if the Postal Inspectors had probable cause to arrest the Appellant as the Government contends, then Appellant was clearly denied his right to counsel under the Escobedo ruling. There is no question about the fact that the interrogation which commenced as soon as the Postal Inspectors approached Appellant's car, amounted to "custodial interrogation" within the meaning of the Escobedo decision, as well as under the Miranda case. The arresting officers have unequivocally stated that they did not advise Appellant of his rights to counsel and the remaining constitutional rights until after they had recovered the marked coin. The marked coin was recovered after a substantial period of time had elapsed and after numerous statements were made in the parking lot of the



postal station.

#### IV

#### THE EVIDENCE OBTAINED RESULTED FROM AN UNLAWFUL SEARCH AND SEIZURE.

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Appellant respectfully submits that the evidence obtained should have been suppressed at the time of trial. Since the arrest of Appellant was illegal under state law for lack of probable cause, all evidence obtained subsequent to said arrest is inadmissible. The evidence obtained shortly after taking Appellant into custody was the marked coin.

The evidence obtained at Appellant's home clearly violates Title 39, Section 903, United States Code, for it expressly prohibits Postal Inspectors from searching the dwelling of Appellant. The Government's argument that Appellant turned over the evidence voluntarily, is without foundation. The Government's contention that the case of United States v. Haas, cited by the Government to support its contention, is inaccurate for the reason that the facts in the Haas case were entirely different from the facts in the case at bar. In the Haas case, the defendant was not in custody when he turned over the evidence that convicted him. Furthermore, the remaining circumstances in said case are clearly distinguishable from the situation involved in this case. It is extremely doubtful as to whether the Haas case would be upheld under the recent rulings, as enunciated by the Supreme Court in Escobedo



and Miranda.

The word "voluntary" as defined in Webster's Unabridged Dictionary, means "brought about by one's own free choice". The evidence obtained from the Appellant's dwelling was clearly obtained while he was under arrest and at the express request of the Postal Inspectors. Appellant's act in going to his dwelling, after he had been arrested, was clearly not voluntary because the moment that he was arrested he was subject to the will of those whose custody he was in, i. e. , the Postal Inspectors. Appellant's refusal to do anything after he had been taken into custody would have amounted to resisting arrest.

The Government places great stress upon the fact that no force was used upon the Appellant. The tenor of this argument tends to imply that the Postal Inspectors are to be congratulated for not having used force upon Neggo. Quite to the contrary, the law expressly prohibits them from using force, where none is exerted by a suspect, and all that they were doing is being civilized, to some extent.

## V

### APPELLANT WAS NOT ARRAIGNED IN A TIMELY MANNER.

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The evidence presented clearly shows that the arrest had been made at approximately 4:20 P. M. on January 27, 1966. No effort was made to have the Appellant arraigned immediately after





his arrest. Appellant was in the custody of the Postal Inspectors for approximately two hours, at which time they searched his dwelling and questioned him. No effort was made of any kind by them to have him brought before a Commissioner or to release him or to book him. One of the Inspectors testified that he could have taken him to the County Jail and booked him, but decided not to. The evidence clearly indicates that Neggo was being questioned for an extensive period of time, after his dwelling had been searched, at the postal station. It is respectfully submitted that the conduct of the Postal Inspectors clearly indicates that the reason for their failure to arraign Appellant was not due to their inability to do so, but because of their desire to obtain a full written confession from him.

### CONCLUSION

In conclusion, it is respectfully submitted that more than one reason exists for the reversal of this case. The actions of the Postal Inspectors unquestionably violated both state and federal law and, therefore, the judgment of the Trial Court must be reversed.

Respectfully submitted,

CHARLES A. LAUFER

Attorney for Appellant



CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Charles A. Laufer

CHARLES A. LAUFER

